Supreme Court, U.S.
FILED

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No. ____

In the
Supreme Court of the United States

MICHAEL E. DAVIS,

Petitioner,

v.

CHARLES NOVY, Individually and in his capacity as a police officer for the VILLAGE OF BOLINGBROOK, ILLINOIS, and LUIS ESCOBAR, Individually and in his capacity as a police officer for the VILLAGE OF BOLINGBROOK, ILLINOIS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals misconstrued this Court's holding in Whren v. United States, 517 U.S. 806 (1996), in finding that respondents had probable cause to arrest or reasonable suspicion to stop the petitioner in his vehicle.

2. Whether the Court of Appeals failed to adequately consider numerous of the principles of Schneckloth v. Bustamonte, 412 U.S. 218 (1973) in deciding whether petitioner's consent to search was coerced. Related to that issue is whether the Court of Appeals' decision condoned a pretext by the respondents designed to improperly coerce petitioner to surrender his Fourth Amendment rights.

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OPINION BELOW

The decision of the Court of Appeals is reported at 433 F. 3d 926 (7th Cir. 2006). The District Court does not publish an opinion in this case. Its pertinent memoranda opinions are reprinted in the appendix.

JURISDICTION

The Seventh Circuit Court of Appeals filed its decision on January 6, 2006. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the Circuit Court's decision on a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATUTORY PROVISION INVOLVED

625 ILCS 5/6-101(d)

In addition to other penalties imposed under this Section [requiring drivers to have licenses or permits] any person in violation of this Section who is in violation of Section 7-601 of this Code relating to mandatory insurance requirements shall have his or her motor vehicle immediately impounded by the arresting law enforcement officer.

STATEMENT OF FACTS

The complaint in this case was filed pursuant to 42 U.S.C. § 1983. Jurisdiction existed in the District Court under 28 U.S.C. § 1331. Jurisdiction existed in the Court of Appeals pursuant to pursuant to 28 U.S.C. § 1291.

The petitioner was riding in his truck in the Village of Bolingbrook, Illinois, on a Saturday. He was traveling through the neighborhood in which his home was located. Petitioner was taking photographs of intersections where village snow plows had piled up snow onto the sidewalks blocking intersections. This was important to petitioner because he is wheelchair-bound. If the snow were piled up on the intersection sidewalks, he could not get to the curb cutouts that allow him to wheel his chair through the intersections, thus restricting his freedom to "wheel" his service dogs through the neighborhood for exercise. He intended to send the photos to the village public works department so that the problem could be documented and alternative methods of plowing could be considered.

During this time, an anonymous telephone caller called the village police department's 911 center and reported that he had seen a person in a truck similar to petitioner's taking a photograph of a man and his young daughter. The dispatch center sent out a call recounting the anonymous report and the respondents, two Bolingbrook police officers in separate cars, responded. Officer Novy saw petitioner's car stopped at a stoplight and pulled behind it. He did nothing at that time to stop or otherwise engage petitioner. When the light turned green, petitioner made a right turn. Novy followed him. During this time, Officer Escobar was driving through the neighborhood, looking for the man and his daughter. He eventually came upon a man and his young daughter. The

father said he had not seen anyone taking pictures of them and said that he had not called 911.

While Novy was following along behind petitioner, he called Escobar and asked him if he (Escobar) had found out any thing further. Escobar reported in the negative. At this point, petitioner made a left turn. Novy followed him again and then engaged his emergency lights to stop the petitioner. Petitioner pulled over. Novy exited his car and approached the petitioner's vehicle. Petitioner asked Novy if he (petitioner) had violated any traffic laws. Novy said "no" but he told petitioner about the anonymous call and asked petitioner if he had been taking pictures. Novy asked petitioner for his driver's license and proof of insurance. Petitioner produced a valid Indiana driver's license but could not produce proof of insurance.

Petitioner had recently moved to Illinois and he told Novy that he had not been able to get an Illinois license yet. He told Novy that he lived in the neighborhood. Petitioner also became extremely afraid that he would be accused of some crime of- or related to- pedophilia. He knew that even the accusation could ruin his reputation and, if it led to his incarceration on such a charge, his health and even his life could be in jeapordy as child sex abusers are frequently attacked by fellow inmates. He was extremely nervous and afraid. At the trial below, a board-certified psychiatrist testified that petitioner was suffering from Post Traumatic Stress Disorder as a result of petitioner's contact with the officers.

When Novy called the police dispatch center to report the stop, he told them that he stopped petitioner because he did not have a valid Illinois driver's license, something that Novy did not know until after the stop. This was both recorded on

tape and enter[ed] into the police communication system records. Escobar wrote a report of the events the same day and said the petitioner was stopped for no valid driver's license.

Novy testified that he noticed, while following along behind petitioner, that a sticker signifying a renewal of the license was partially covered by the license plate bracket such that the month of the renewal was not visible. Novy wrote a ticket for that infraction about 2 ½ hours after the original stop.

According to the petitioner, respondents never advised him of his right to refuse the warrantless searches of his vehicle and his home. With respect to each of those searches, petitioner testified that, when asked to consent to the searches, he asked what would happen if he refused and was told, several times, "We will take you to jail and we will impound your car." When he signed a written consent to search card, ostensibly allowing respondents to search his home, petitioner had been arrested and placed in Novy's car, bolstering the claim the he was "about to go to jail."

Respondents searched petitioner's car for approximately 30 minutes and were at the site of the stop for over an hour. The emergency lights on Novy's car were on the entire time. Petitioner had been ordered out of the car and, while Novy searched it, petitioner was told to sit on the tailgate of the car while Escobar stood five feet away from him in a "defensive posture."

Respondents put petitioner in Novy's car and drove him home, approximately three blocks away from the site of the stop. They then conducted a search of petitioner's home, asking him many personal questions alluding to pedophiliac

activity. Respondents found nothing suspicious in the home. Novy then brought petitioner back out from the home, placed him back in his (Novy's) squad car and took twenty minutes to write tickets for no valid drivers license, no proof of insurance, and for having a partially obscured registration sticker. Novy then told petitioner that they had taken up enough of his time and released him from custody. No other investigation was conducted and no other charges were filed against petitioner.

REASONS FOR GRANTING THE PETITION

I.

THE COURT OF APPEALS MISCONSTRUED THIS COURT'S HOLDING IN WHREN v. UNITED STATES. THIS COURT SHOULD ACCEPT THIS CASE TO CLARIFY ITS HOLDING IN THAT CASE

The Court of Appeals held that the decision in Whren v. United States, 517 U.S. 806 (1996) was dispositive of the issue of the legitimacy of the vehicular stop of the petitioner's truck. But it is not and the Court of Appeals decision gives rise to confusion as to the holding in Whren. This Court should accept this case for review in order to clarify the parameters of its decision in Whren.

In Whren, the police officers suspected the defendants of being engaged in illicit drug trafficking and were following the defendants as they were riding in a vehicle. The lower court had determined that the officers did not, at the time of the vehicular stop, have probable cause to stop the vehicle for suspected drug trafficking. However, the Court determined-and the defendants conceded-that the defendants were, in fact,

guilty of traffic law violations and that the arresting officers had observed the violations prior to the stop.

The defendants argued that the stop should be held illegal because the "real" reason they were stopped was the officers' suspicion of drug trafficking, for which there was no probable cause, and that the officers should not be allowed to argue legitimacy of the stop by bootstrapping through reference to minor traffic violations.

The distinction in this case is that the evidence was conflicting on whether the defendant officer who stopped the petitioner's vehicle had observed the violation used to justify the stop as of the time of the stop, something not present in the Whren case. The Court of the Appeals noted that petitioner admitted at trial that the renewal sticker was partly obscured. Although not stating so explicitly, the Court seemed to indicate that this objective fact brought this case squarely within the parameters of the Whren decision. However, the authority is legion that the legitimacy of a police stop of a vehicle must be established or refuted by discerning what the police knew at the time of the stop-not what they discovered after the stop.

There were numerous pieces of evidence, both direct and circumstantial, that Officer Novy did not observe the purported vehicle sticker violation until some time after the stop. Most of them came from Officer Novy who, according to petitioner's testimony at trial, disavowed stopping plaintiff for that reason. The contemporaneous radio communications, mobile data communications, and narrative report of Officer Novy's fellow officer, Officer Escobar, all asserted that the arrest was made because petitioner did not have a valid Illinois driver's license, something that the record shows Novy did not know about at the time of the stop.

The Court of Appeals upheld the magistrate judge's grant of a motion for a directed verdict finding that no legitimate argument could be made that there were factual issues to be decided by the jury. However, this was done in the face of a memorandum opinion of the district court judge (prior to reassignment to the magistrate judge) denying a defense motion for summary judgment, pegged to the same standard as a motion for directed verdict, which memorandum cited to the Whren decision but still held that the motion should fail.

The court of Appeals decision blurs the line in Whren where there was no contest that the police had every right to stop a vehicle for a minor traffic violation and because of what they observed prior to the stop. The Court of Appeals in this case stated that, "We cannot imagine that Novy did not look at the truck's rear license plate during that time [the time during which Novy was following petitioner's vehicle]." But the anonymous 911 call had not provided a license plate number for Novy to match. Novy's call to Escobar right before the stop signifies that Novy was focusing on the "photographing" incident-not on the renewal sticker-and all the objectively verifiable circumstantial evidence confirms this. Thus, it appears that the Court of Appeals decision has blurred significant distinctions between the facts of the Whren decision and those applicable to this case.

II.

THE COURT SHOULD GRANT THE PETITION IN ORDER TO CLARIFY AND DELINEATE THE PRINCIPLES IN SCHNECKLOTH v. BUSTAMONTE REGARDING WHEN A CONSENT TO SEARCH IS COERCED. THIS COURT SHOULD ALSO ACCEPT THIS CASE TO CONFIRM THAT PRETEXTS BY POLICE TO IMPROPERLY COERCE THE SURRENDER OF FOURTH AMENDMENT RIGHTS WILL NOT BE ALLOWED

This Court held in Schneckloth v. Bustamonte, 412 U.S. 218 (1973), that " . . . in determining whether a defendant's will was overborne, in a particular case, the court [must] assess the totality of all the surrounding circumstances-both the characteristics of the accused and the details of the interrogation." 412 U.S. at 226 (emphasis added).

The facts of this case show that petitioner wa. in an extremely vulnerable state, both physically and emotionally, at the time he signed a "consent to search" form and when he verbally consented to a search of his vehicle. He felt that he was under scrutiny for offenses that would be consistent with pedophilia (and the defendants agreed that he was). Both the District Court (the district judge and the magistrate judge) and the Court of Appeals agreed with petitioner's argument that defendants did not have probable cause to arrest or reasonable suspicion to stop petitioner based on the content of the anonymous call under the principles of this Court's decision in Florida v. J.L., 529 U.S. 146 (2000). It is commonly known that incarcerated persons who stand convicted or accused of crimes against children do not fare well in a prison situation. Thus, the stakes were high.

Physically, plaintiff was wheelchair-bound. He was threatened with arrest and with the impoundment of his vehicle. Plaintiff had recently moved to the Chicago area and started a new job. The threat to impound his vehicle posed the threat of rendering him immobile and unable to go to work. Incarceration might have greater consequences. A board-certified psychiatrist testified at the trial that he believed petitioner to have suffered Post-Traumatic Stress Disorder as a result of his confrontation with the respondents.

Petitioner believes that the courts below did not give adequate consideration to these physical and emotional conditions and this Court should accept this case for review to confirm that these physical and emotional conditions should have been taken into consideration in determining whether petitioner's will was overborne and he was coerced into consenting to searches of his vehicle and home rather than granting his voluntary consent.

Finally, the Court of Appeals failed to recognize that the threat by the officers to arrest petitioner and to impound his vehicle was merely a pretext to induce submission. See U.S. v. White, 979 F. 2d 539 (7th Cir. 1992); U.S. v. Duran, 957 F. 2d 499, 502 (7th Cir. 1992), U.S. v. Talkington, 843 F. 2d 1041, 1047 (7th Cir. 1988); and U.S. v. Colonia, 870 F. 2d 1319 (7th Cir. 1989). The fact is that the Illinois statute mandates arrest and impoundment. Defendants admitted that they made the threat to do both and yet they did not. When they found nothing incriminating in the searches, they simply turned plaintiff loose, proving by their own actions that their threats were insincere and designed solely to dupe the petitioner and, in his vulnerable state, submit to the force and authority of the officers. This Court should accept this case to establish the principle adopted in the above Court of Appeals decisions that ploys and pretexts to induce citizens to

surrender their Fourth Amendment rights will not be tolerated.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant his petition for a writ of certiorari and accept this case for a full review.

Respectfully Submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 04-4096

[Filed January 6, 2006]

MICHAEL E. DAVIS,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
CHARLES NOVY, individually and in his capacity as a Bolingbrook, Illinois, police officer for the Village of Bolingbrook, and LUIS ESCOBAR, individually and in his capacity as a Bolingbrook police officer for the Village of Bolingbrook,	)
	)
Defendants-Appellees.	)
	)

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 03 C 572 - Arlander Keys, Magistrate Judge.

Before: EASTERBROOK, EVANS, and SYKES, *Circuit Judges*.

OPINION

EVANS, *Circuit Judge*. In this case, brought under 42 U.S.C. § 1983, Michael Davis alleges that two police officers from the Village of Bolingbrook, Illinois, violated his rights under the Fourth Amendment by stopping his truck without probable cause and searching it and his home under the authority of a written "consent to search" he was coerced into signing. The officers insist that Davis voluntarily consented to the searches and that an obscured registration sticker on his license plate supplied probable cause for the stop. After 3 days of trial before a jury, Magistrate Judge Arlander Keys (presiding with the parties' consent, *see* 28 U.S.C. § 636(c)(1)) granted the defendants' motion for judgment as a matter of law, finding that the evidence left no doubt about the validity of Davis's consent and that probable cause for the stop was unquestionably present.

The officers, Charles Novy and Luis Escobar, were investigating an anonymous 9-1-1 telephone call about a man in a black truck taking pictures of a little girl who was walking on a sidewalk with her father. The caller also told the police dispatcher of another incident in the same area involving an individual taking pictures of girls after school. While Escobar was trying to find other information about the call, Novy spotted Davis's truck. It wasn't a perfect match — Davis's truck was dark green — but it was close, so Novy decided to follow while waiting for further word from Escobar. Novy testified that as he was following the truck, he saw that the registration sticker — displaying the month of issuance on the Illinois license plate — was obscured, in violation of state law. *See* 625 ILCS 5/3-413(b). He decided to pull Davis over to look into the matter.

When Novy walked up to the truck's window, Davis asked about the reason for the stop: "I asked him . . . did I commit some sort of traffic violation or traffic infraction." According to Davis, Novy replied "no" and told him about the 9-1-1 call. Naturally, Davis was troubled by the suggestion implicit in the call — that he might be some sort of a pedophile. (There is absolutely nothing in the record to suggest that Davis is in any respect a bad guy.) Davis was concerned, however, because he was in fact taking pictures that day, though not of children. Rather, he was trying to document a problem with Bolingbrook's snowplowing which, on this February day, left piles of snow blocking the sidewalks. Why was he concerned? He uses a wheelchair, and the snow piles made it difficult for him to get around.[1]

Davis had his camera with him in the truck, and the camera bag was plainly visible in the truck's cab. When Novy saw the camera bag, he become more convinced that he had found the truck he was looking for. He asked Davis for his driver's license and proof of insurance, which Davis didn't have. And Davis's driver's license was from Indiana. Davis explained that he had moved to Illinois some 6 months before and had not yet obtained an Illinois driver's license. Illinois law requires that an Illinois driver's license be obtained within 90 days of a driver's move into the state. *See* 625 ILCS 5/6-102(7).

Other items Novy saw in the cab — rope, duct tape, and towels covering the upholstery — heightened his suspicions.

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[1] Although fairly described as a "wheelchair-bound person," Davis is, it appears, able to do some walking. At one point during the encounter, he exited the truck and walked to its rear without assistance.

Concerned that he might have a kidnapper (or a possible crime involving children) on his hands, he asked Davis for permission to search the vehicle. Davis says that when he asked Novy what would happen if he refused, Novy told him that because he had no valid driver's license or proof of insurance, his truck would be impounded and he would be taken to jail. *See* 625 ILCS 5/6-101(d). Worried that he would be unable to get by without his truck, Davis consented. He got out of the truck and waited with Officer Escobar (who had by then arrived on the scene) while Novy looked around the cab. The search turned up additional, perhaps suspicious, items: a ticket stub from a children's zoo, court documents from South Dakota, and an unusual article of clothing — women's thong underwear — behind the driver's seat.

At this point, Novy felt that further investigation was warranted. He conferred with Escobar and decided to ask Davis for permission to search his house. He presented Davis with a fairly standard police "consent to search" form, which Davis signed. The three of them then went to Davis's house, where Novy conducted the search. Finding nothing of concern, Novy ended the encounter by writing Davis up for three vehicle-code violations: having no valid driver's licence, operating an uninsured vehicle, and displaying an obscured registration sticker. The whole encounter between Davis and the officers lasted 2 hours.

Davis eventually sued Officers Novy and Escobar. He claimed that the initial traffic stop was illegal because the officers lacked probable cause to believe that he had committed, or was committing, an offense. On this point, the district court decided, and neither party disagrees, that the anonymous tip was an insufficient basis for the stop — not only was it uncorroborated, *see Florida v. J.L.*, 529 U.S. 266, 270, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000); *United*

States v. Johnson, 427 F.3d 1053, 1057 (7th Cir. 2005), but it didn't describe anything illegal. (Taking drive-by photos of children may be suspicious, but by itself it isn't against the law.) And the officers did not learn that Davis had an invalid driver's license and no proof of insurance until after the stop.

That leaves the registration sticker on Davis's license plate. If, as Novy asserts, he saw the obscured sticker while following Davis, he had probable cause to pull him over for a violation of the vehicle code, even if the real reason for the stop was to investigate the anonymous 9-1-1 call. *See Whren v. United States*,[2] 517 U.S. 806, 813, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) (officer's subjective motive irrelevant to reasonableness of traffic stop); *United States v. Rogers*, 387 F.3d 925, 934 n.9 (7th Cir. 2004). But Davis claims that Novy didn't see the obscured sticker until later (though he admits that the sticker was in fact obscured). He relies on three pieces of circumstantial evidence: (1) when Davis asked about the reason for the stop, Novy didn't mention the obscured sticker but instead told him about the child-picture-taking complaint; (2) Novy didn't stop him as soon as he allegedly saw the obscured sticker; (3) the transcript of the radio communications among Novy, Escobar, and the dispatcher contains no mention of an obscured sticker.

Like Magistrate Judge Keys, we do not believe that this evidence seriously calls into question whether Novy saw the obscured sticker before stopping Davis's truck. It is undisputed that Novy followed Davis's truck for about a half a mile before signaling him to pull over. We cannot imagine that Novy did not look at the truck's rear license plate during

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[2] *Whren* is the seminal case on traffic stops. Strangely, it is not cited by Davis.

that time. After all, that's what police officers do when following a vehicle. Also, the fact that Novy didn't stop Davis immediately upon seeing the sticker means little — police are not required to make their move at the first sign of an offense, and in this case it was reasonable for Novy to wait and see if any further information was forthcoming from Officer Escobar. Nor is it unexpected that an officer will hold back from telling a motorist all of his reasons for initiating a stop. Simply put, Davis does not dispute that the sticker was obscured, and he has not presented sufficient evidence to persuade a rational factfinder that Novy did not see it before the stop as he testified.

Davis also claims that he was coerced into consenting to the search of his truck and his home. The voluntariness of a consent to search is judged by the totality of the circumstances. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 229, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); *Ruvalcaba v. Chandler*, 416 F.3d 555, 560 (7th Cir. 2005). Davis's argument rests primarily on two circumstances. First, the nature of the allegation: under suspicion of possible pedophile-like behavior, his choice was to cooperate or risk an unbearable stigma. But if grave accusations were inherently coercive, as this argument suggests, then a valid consent would be impossible to obtain in connection with any serious offense.

Davis identifies a second circumstance which is more specific: Novy's declaration that if Davis did not consent to the searches, his truck would be impounded and he would be taken into custody. But this wasn't a baseless threat: the Illinois Vehicle Code directs that a driver who is lacking both license and insurance "shall have his or her motor vehicle immediately impounded by the arresting law enforcement officer." 625 ILCS 5/6-101(d). We asked the parties at oral

argument whether this provision imposes a binding obligation on the arresting officer to impound the vehicle. They have not called our attention to any authoritative interpretation on the point by Illinois courts. But the best, and we suggest the most common-sense understanding of the statute, is that an officer can exercise discretion on whether a vehicle should be impounded. After all, if impounding of vehicles under all circumstances was required, a small village like Bolingbrook (population 40,843) could very well be overrun with impounded cars.

Whether mandatory or discretionary, the statute authorized Novy to impound Davis's truck. And given what Novy was faced with — a report of suspicious photo-taking; a driver with an out-of-state license carrying rope, duct tape, towels, and ladies' underwear in his truck — it was reasonable for him to use the tools available to him to investigate further. One way would have been to impound the vehicle and perform the search when the truck was in custody. Another way was to obtain Davis's consent. He gave Davis a reasonable choice, and we can't conclude that Novy's offer was coercive. And, it is important to note, Davis got exactly what he hoped to get by consenting: He was not arrested and his truck was not impounded. The fact that Novy apparently elected not to enforce the Illinois law to its fullest doesn't mean Davis's consent was illegally obtained. It would be different, of course, if the threat of arrest and/or impoundment of the truck was unauthorized by state law. In that case, Novy would have obtained a consent with an empty threat, and the result would be different.

Finally, although the stop here was permissible with probable cause under *Whren*, it could be argued that the information available to Novy might well have justified a brief investigatory stop based on reasonable suspicion under

Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Given that we live in a time of increasing crimes against children — what with "Amber Alerts" and all — the limited intrusion of a brief traffic stop under circumstances like those present in this case cannot be easily labeled as unlawful.

We agree with the district court that no reasonable jury could find that Novy lacked probable cause to stop Davis or that Davis's consent to the search of his truck and his home was legally coerced. We therefore AFFIRM the court's judgment.

A true Copy:

Teste:

/s/
Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 03 C 572

[Filed June 15, 2004]

Michael E. Davis	)
	)
v.	)
	)
Charles Novy and Luis Escobar	)
	)

JUDGMENT IN A CIVIL CASE

[X] Decision by Court. This action came to trial before the Court. The issues have been tried and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that The Court grants the Defendants' Motion for Judgment as a Matter of Law. Judgment is entered in favor of the defendants and against the plaintiff.

Michael W. Dobbins, Clerk of Court

/s/_____
Alicia Castillo, Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 03 C 572

[Filed June 15, 2004]

MICHAEL E. DAVIS,	)
	)
Plaintiff,	)
	)
v.	)
	)
CHARLES NOVY and	)
LUIS ESCOBAR, individually	)
and in their capacity as	)
Bolingbrook police officers,	)
	)
Defendants.	)
	)

JUDGES: ARLANDER KEYS, United States Magistrate Judge.

MEMORANDUM OPINION AND ORDER

Michael Davis sued Charles Novy and Luis Escobar, both police officers with the Village of Bolingbrook, alleging that they violated his Fourth Amendment rights during the course

of a traffic stop and the subsequent search of his truck and his home. The case went to trial on May 17, 2004, and, at the close of the plaintiff's case, the officers moved for judgment as a matter of law. For the reasons explained in this Memorandum Opinion and Order, the Court grants the officers' motion.

A. Factual Background

On February 9, 2002, Michael Davis was driving around his Bolingbrook neighborhood taking pictures of snow mounds. Mr. Davis, who uses a wheelchair to get around, was attempting to document a problem with the way the village plowed snow; according to Mr. Davis, the plows piled the snow in a way that blocked his access to streets and sidewalks and prevented him from taking his dogs out for exercise. Mr. Davis left his house at about 11:30 a.m., driving around the neighborhood in his 1995 dark green Ford F150 pickup truck with a black camper shell on the back of it.

At about noon that same day, the Bolingbrook police department received a call through its 9-1-1 dispatcher, complaining that a white male was driving around the area of Commonwealth and Brighton in Bolingbrook, taking pictures of a young girl. The caller reported that the man was wearing a hat and driving a black Ford pickup truck with a cab on the back. The dispatcher assigned two officers to respond to the call, Officer Charles Novy and Officer Luis Escobar.

Upon arriving at the general area reported in the call, Officer Novy saw Mr. Davis, a white male, and his dark green Ford pickup truck with a cab on the back of it. Officer Novy followed Mr. Davis for a bit, and then pulled him over. Upon doing so, Officer Novy noticed a hat and a camera bag

on the seat next to Mr. Davis; he also saw towels, duct tape and rope in the cab. When Mr. Davis could not provide a valid Illinois driver's license or proof of insurance, Officer Novy arrested him, placing him in the backseat of his squad car.

Officer Escobar joined the two at some point during this initial encounter. The officers searched Mr. Davis' truck, after obtaining Mr. Davis' permission to do so, and found a pair of women's thong underpants and a stub from the Brookfield Children's Zoo. They then asked him to sign a card stating: "I give the Bolingbrook police department permission to search the following: [here, Officer Escobar had filled in "residence"] located at the following: [here, Officer Escobar had filled in 1095 Bothwell," Mr. Davis' address]. I give this permission voluntarily & without threats or promises of any kind." *See* Plaintiff's Exhibit 8. Mr. Davis signed the card, and the officers searched his home. That search turned up nothing to suggest that Mr. Davis was involved in any way with child pornography or other child exploitation.

After the search, the officers and Mr. Davis went back outside, where Officer Novy issued citations to Mr. Davis for driving without a valid Illinois' driver's license, for driving an uninsured vehicle, and for having an obstructed registration sticker on his rear license plate – all violations of the Illinois vehicle code. Officer Novy allowed Mr. Davis to give a signature in lieu of posting a bond, and then he left; Officer Escobar left while Novy was writing up the citations.

Almost a year later, on January 24, 2003, Mr. Davis sued Officer Novy and Officer Escobar, alleging that they violated his constitutional rights in the course of the initial stop, and in the subsequent searches of his person, his truck and his home.

B. The Trial

The case was tried before a jury on May 17, 18 and 19, 2004. At trial, Mr. Davis testified first. He explained that, on February 9, 2002, he decided to drive through the neighborhood to take pictures of snow mounds so that he could show the Village how the snow impeded his access to the streets and sidewalks, and to try to find a way to solve the problem. Tr. at 106. He described the route he drove, which, according to the map shown to the jury, put him in or near the area reported in the 9-1-1 call. Tr. at 111-12.

Mr. Davis testified that, at some point while he was out on his picture-taking expedition, he noticed a police car following him, and he was eventually pulled over. Tr. at 110, 112-13. He testified that, when Officer Novy approached the truck, he asked the officer whether he had done anything wrong, and Officer Novy had responded "no." Tr. at 113. According to Mr. Davis, Officer Novy said he stopped him because the police department had "received an anonymous 911 phone call from some woman stating that I had been taking pictures of children." Tr. at 114. Mr. Davis testified that Officer Novy then asked him for his driver's license and insurance card; he produced his Indiana driver's license, which he learned was no longer valid, but he was unable to provide an insurance card. Tr. at 115, 117.

Mr. Davis testified that Officer Escobar arrived on the scene about this time, and, after the two officers conferred briefly, Officer Novy asked Mr. Davis if he could search his truck. Tr. at 117-18. Mr. Davis testified that he asked what would happen if he refused, and Officer Novy told him that they would have to impound his truck and take him to jail. Tr. at 118. Mr. Davis testified that he then agreed to the search; Officer Novy searched his truck for about 30 to 45

minutes, while Mr. Davis sat on the tailgate of his truck, with Officer Escobar standing in front of him in a defensive posture. Tr. at 119-20, 122.

Mr. Davis testified that, after Officer Novy searched the truck, he told Mr. Davis he was under arrest; Officer Novy patted him down and asked him to empty his pockets, which he did. Tr. at 123. Mr. Davis testified that Officer Novy then placed him in the backseat of the squad car and told him that he wanted to search his house, which was just a few blocks away. Tr. at 13-24. Mr. Davis testified that he again asked what would happen if he refused, and Officer Novy again told him that he would impound his truck and take him to jail. Tr. at 124. Mr. Davis testified that the officers presented him with a consent card, and he signed it. Tr. at 124, 127. The three then proceeded to his house, where Officer Novy searched through his bedroom (in the closets, dresser drawers, and boxes) and took a cursory look through his garage, then they went back outside. Tr. at 131-33. Mr. Davis testified that Officer Novy then wrote out the tickets and filled out some other paperwork, gave copies to him, and then left. Tr. at 133-34.

Mr. Davis conceded that he had committed the violations for which he ultimately received citations: he testified that he had moved to Illinois in August of 2001, and that he had never obtained an Illinois driver's license; he admitted that, on the morning of February 9, 2002, the registration sticker on the rear license plate of his truck was partially obscured by the bracket around the plate; and he admitted that, as of that date, he had no insurance for his truck. Tr. at 103, 146-48, 150-51. Mr. Davis testified that, when Officer Novy approached his truck, there was, in fact, a hat, a camera, a camera bag, towels, duct tape and rope in the cab of his

truck, all either on the seat next to him or on the floor of the cab. Tr. at 153-54.

With respect to the officers' demeanor, Mr. Davis testified that, during the initial traffic stop, Officer Novy was polite to him; he was neither rude nor abrasive, threatening nor offensive. Tr. at 152. So too during the course of the search of his truck. Tr. at 161. He testified that the officers did not touch him or handcuff him; they did not display their weapons. Tr. at 156-57, 162. Mr. Davis testified that he had agreed to the searches of his truck and home, but that he did so because he felt coerced by Officer Novy's initial comment to him that the police had received a call about someone taking pictures of children. Tr. at 178-80. He later testified that he also felt coerced because of Officer Novy's statement that, if Mr. Davis did not allow the officers to search his truck and his home, they would arrest him, take him to jail, and impound his truck. Tr. at 181. Mr. Davis testified that he also felt coerced when Officer Novy put him in the backseat of his police car and closed the door. *Id.* at 182.

Next, the plaintiff called Officer Novy to the stand. He testified that he was on duty at around noon on February 9, 2002 when he received a call on his MDT in his squad car indicating that the department had received a complaint, via cell phone, about a man in a truck taking pictures of kids. Tr. at 185. According to the report, the suspect was a white male wearing a hat and driving a black Ford pickup with a cab on the back; he was reportedly driving near the intersection of Commonwealth and Brighton in Bolingbrook. Tr. at 185, 188. Officer Novy testified that he responded to that general area, where he saw Mr. Davis' truck, which, in his view, closely matched the truck described in the report. *Id.* at 188-89.

Officer Novy testified that he pulled in behind Mr. Davis and followed him for a time. Tr. at 245-46. He further testified that he then noticed that the registration sticker on the rear license plate of Mr. Davis' truck was obstructed or covered such that the month of expiration was unreadable, and that he knew that was a violation of the Illinois vehicle code. *Id.* at 246. Officer Novy testified that, after following Mr. Davis for a while, and after learning from Officer Escobar that he had no additional information on the report, Officer Novy radioed in a traffic stop, engaged his emergency lights and pulled Mr. Davis over. Tr. at 190-95, 247. Officer Novy testified that, when he made the decision to stop Mr. Davis, he had two things in his mind: first, he was thinking that this vehicle matched the description of the vehicle reported over the MDT, and, second, he was thinking that the same vehicle was showing a clear violation of the Illinois vehicle code. Tr. at 246-47.

Officer Novy testified that, after Mr. Davis pulled over, he walked up to the truck and asked Mr. Davis for his driver's license; as he did so, he looked into the cab and saw a camera bag and black hat on the seat next to Mr. Davis, rope and duct tape on the floor of the cab, and towels covering the seat, the floor and the dashboard of the truck. Tr. at 247-48. He testified that those things, even if seemingly innocuous on their own, together raised some red flags in his mind, given his experience and training. Tr. at 247-50. Additionally, when Officer Novy asked Mr. Davis for his driver's license, Mr. Davis produced an Indiana license; and when Officer Novy asked Mr. Davis for proof of insurance, he was unable to provide it; those things were significant to Officer Novy because they both amount to violations of the Illinois vehicle code. Tr. at 251-53.

Officer Novy testified that, after the conversations about Mr. Davis' driver's license and inability to provide an insurance card, he told Mr. Davis that he pulled him over because the frame on his rear license plate covered the sticker, which is a violation of the Illinois vehicle code. Tr. at 253. Officer Novy testified that he then asked Mr. Davis if he had been taking pictures, and explained that the police department had received a call about someone taking pictures of children. Tr. at 253-54. According to Officer Novy, Mr. Davis explained that he had been taking pictures of snow mounds and why; he also offered to turn over a roll of film to corroborate his story. Tr. at 254. Officer Novy testified that he was polite at all times to Mr. Davis, and that Mr. Davis was cooperative at all times with the officers. Tr. at 256-57, 259-60, 267.

Officer Novy testified that he asked Mr. Davis for permission to search the cab of his truck, Mr. Davis agreed to the request, and walked to the tailgate of his truck, where he waited with Officer Escobar while Officer Novy searched the truck. Tr. at 259-61. Officer Novy testified that, in the course of that search, which took about twenty minutes, he found a pair of black thong underwear and a ticket stub to the Brookfield Children's Zoo. Tr. at 262-63. Officer Novy testified that, after discussing the situation with Officer Escobar, he advised Mr. Davis that he was under arrest for not having a valid Illinois driver's license, for having no insurance and for having an improper display of his registration plate. Tr. at 271. Officer Novy testified that he then patted Mr. Davis down, had him empty his pockets, and placed him in the back of his squad car; he did not handcuff Mr. Davis at this time, or ever. Tr. at 272-74.

Officer Novy testified that he and Officer Escobar then decided to ask Mr. Davis for permission to search his home;

they had him sign a "voluntary permission to search" card, Tr. at 276-77, and then drove, with Mr. Davis in the backseat, to Mr. Davis' house. Tr. at 280-82. Officer Novy testified that he searched Mr. Davis' house and garage for a total of about twenty-five minutes, and found nothing unusual; they then went outside, Officer Novy issued the three citations to Mr. Davis (one for driving without a valid Illinois driver's license, one for driving an uninsured vehicle, and one for improperly displaying his registration sticker), and completed some additional paperwork, he apologized to Mr. Davis for taking up so much of his time, and then the officers left. Tr. at 290-303. By Officer Novy's estimate, the entire encounter - from the time Officer Novy pulled Mr. Davis over, to the time he released him from his custody – lasted less than two and a half hours. Tr. at 319.

With regard to the 9-1-1 call that set in motion the events leading to trial, Officer Novy testified that he had had specialized training in dealing with crimes against children and with pedophiles, and that he was aware of another call that had come in before the call that led to Mr. Davis' arrest; the first call came in roughly eleven days earlier; that call reported a white male taking pictures of a child in the same area as the February 9 call. Tr. at 241-44.

After Officer Novy, Mr. Davis called his treating psychiatrist, Dr. Gerson Kaplan, to the stand. Dr. Kaplan testified that he had been treating Mr. Davis since August of 2002, after Mr. Davis was referred to him by a colleague, Dr. Daniel Shapiro. Tr. at 332. Dr. Kaplan testified that Mr. Davis had come to see him because he was upset after the run-in with Officers Novy and Escobar; Dr. Kaplan diagnosed Mr. Davis with post-traumatic stress disorder ("PTSD"), and prescribed antidepressants and various medications to help him sleep. Tr. at 333-35. Dr. Kaplan testified that, in his

view, Mr. Davis continues to suffer from PTSD as a result of the events of February 9, 2002. *Id.* at 337-38. On cross examination, counsel for the defendants raised a number of inconsistencies between what Mr. Davis had reported to Dr. Kaplan, and what he had reported to the psychiatrists he had seen in the past, and these seemed to surprise Dr. Kaplan. Ultimately, Dr. Kaplan conceded that Mr. Davis' behavior was as consistent with paranoid disorder as it was with PTSD, and that, to the extent Mr. Davis suffered from PTSD, it was not necessarily triggered by the February 9, 2002 encounter with Officers Novy and Escobar; in fact, Dr. Kaplan conceded, Mr. Davis had experienced a number of events before that day that could have been perceived as traumatic and could have triggered the PTSD. Tr. at 351-67.

After Dr. Kaplan, the plaintiff called Pamela Carter, who works in telecommunications with the Bolingbrook police department; Ms. Carter testified about how the calls coming in to the dispatch center are logged and how various codes on the call sheets are interpreted. Tr. at 405-22.

Finally, Mr. Davis called Officer Escobar to the stand. Officer Escobar testified that he received the 9-1-1 call on his MDT and responded to the scene. Officer Escobar testified that he briefly investigated the matter, but he obtained no additional information on the incident, and he reported this fact to Officer Novy, who had also been assigned to the call. Tr. at 436-41. Officer Escobar testified that he then learned that Officer Novy had initiated a traffic stop in connection with the call, and so Officer Escobar began heading in the direction of that stop; when he arrived on the scene, he saw a truck that matched the description given in the 9-1-1 call, and he saw Officer Novy sitting in his squad car right behind the truck. Tr. at 442. At that time, Officer Escobar testified, he walked up to Officer Novy's squad car, and Officer Novy

told him that he had stopped Mr. Davis for having an obstructed registration sticker. Tr. at 442-43.

Officer Escobar testified that, Officer Novy told him what he had seen in Mr. Davis' truck and said that he wanted to search the cab; Officer Escobar agreed that, based on what Officer Novy had seen in plain view, a search of the cab was appropriate. Officer Escobar testified that Officer Novy then searched Mr. Davis' truck, while Mr. Davis sat on the tailgate of the truck, and Officer Escobar stood 7 to 10 feet in front of him in an "interview stance" – that is, he stood facing Mr. Davis with his hands out in front of him. Tr. at 443-44. According to Officer Escobar, the search of the truck took about 20 or 30 minutes. Tr. at 444.

Officer Escobar testified that he did not make the decision to arrest Mr. Davis; that decision was made by Officer Novy. Tr. at 448. Escobar further testified that he heard Novy radio to dispatch that he was arresting Mr. Davis for driving without a valid Illinois driver's license. *Id.* Officer Escobar testified that, throughout the encounter, Mr. Davis was very cooperative, and that he either suggested that the officers search his truck, or Officer Novy asked him if they could search his truck and he said yes. Tr. at 459, 463. In Officer Escobar's view, Officer Novy behaved in a very professional manner in his dealings with Mr. Davis, and Mr. Davis, in turn, was very cooperative with the officers; Officer Novy was never verbally abusive or threatening; he never touched Mr. Davis, never touched his weapon or otherwise gestured in a manner that could be perceived as threatening. Tr. at 464-65.

Officer Escobar testified that, after Officer Novy searched the truck, he told him what he had found, and told him that he wanted to ask Mr. Davis if they could search his house;

Officer Escobar agreed that the items in Mr. Davis' truck – the thong and the zoo stub – were cause for concern. Tr. at 466, 468. Officer Escobar testified that he got a consent to search card from his car, filled it out and presented it to Mr. Davis; he testified that he read the card verbatim to Mr. Davis, and that Officer Novy also explained the card, in his own words, to Davis. Tr. at 468-70. Shortly thereafter, Mr. Davis signed the card; according to Officer Escobar, Mr. Davis at no point gave any indication – physical or verbal – that he was unwilling or hesitant to allow the search; on the contrary he remained cooperative throughout. Tr. at 471.

With respect to the search of the house, Officer Escobar testified that he did not really participate, he did not go through boxes or anything like that; instead, his role was to help assure Officer Novy's safety during the search. Tr. at 473-75. Officer Escobar testified that the three went back outside before 2:00 p.m., he helped to start the paperwork and then he left, making a brief stop to report to the supervising sergeant (who was parked just down the street), before heading back to the station. Tr. at 476-77.

C. The Motion for Judgment as a Matter of Law

At the close of Mr. Davis' case, which, because of the way the witnesses were called and examined, actually include a large part of the officers' case, the defendants moved for judgment as a matter of law. The Court indicated that the motion would be granted, and briefly explained why. The purpose of this Memorandum Opinion and Order is to memorialize, and detail the reasoning behind, the Court's decision on the defendants' motion.

The Federal Rules of Civil Procedure provide that,

> [i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

Fed. R. Civ. P. 50(a). In deciding a motion under Rule 50(a), the Court reviews all of the evidence in the record and draws all reasonable inferences in favor of the nonmoving party; the Court may not make credibility determinations or weigh the evidence, but gives credence to the evidence favoring the nonmovant, as well as that "evidence supporting the moving party that is uncontradicted and unimpeached . . . ." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150-51, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000); *Ortloff v. U.S., 335 F.3d 652, 660 (7th Cir. 2003) (citing Payne v. Milwaukee County*, 146 F.3d 430, 432 (7th Cir. 1998)); *Pease v. Production Workers Union of Chicago*, 2004 U.S. Dist. LEXIS 4055, No. 02 C 6756, 2004 WL 526369, at *2 (N.D. Ill. March 15, 2004). "To avoid [an unfavorable ruling under Rule 50(a)], the plaintiff must do more than argue that the jury might have disbelieved all of the defendant's witnesses"; he "must offer substantial affirmative evidence to support [his] argument." *Heft v.* Moore, 351 F.3d 278, 284 (7th Cir. 2003) (citing *Perfetti v. First National Bank*, 950 F.2d 449, 456 (7th Cir. 1991)).

In this case, Officers Novy and Escobar moved for judgment as a matter of law on all of Mr. Davis' claims,

arguing, first, that Officer Novy had probable cause to initiate a traffic stop of Mr. Davis' truck, and, second, that the searches of Mr. Davis' person, truck and house were consensual and, therefore, lawful. Officer Escobar also argues that he is entitled to judgment as a matter of law because his role in the events giving rise to any alleged constitutional violation was limited at best. And, finally, the officers argue, even if Mr. Davis' evidence established that constitutional violations had occurred, the officers are nonetheless entitled to judgment as a matter of law because they are shielded from liability for those violations under the doctrine of qualified immunity. The Court agrees on all counts: based upon the evidence presented at trial, even when viewed in the light most favorable to Mr. Davis, a reasonable jury simply could not have found in favor of Mr. Davis with respect to the constitutional violations he alleged. *See Reeves*, 530 U.S. at 135 ("Rule 50 requires a court to render judgment as a matter of law when a party has been fully heard on an issue, and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue.").

In his complaint, Mr. Davis claimed that Officers Novy and Escobar, while acting under color of state law, intentionally deprived him of his rights under the Constitution of the United States – namely his right to be free from the unreasonable search and seizure of his person, and the unreasonable search of his vehicle and his home. Specifically, Mr. Davis claimed that the officers violated his constitutional rights when Officer Novy initially pulled him over without reasonable suspicion to believe that he had committed a criminal offense. Mr. Davis further claimed that the officers subsequently violated his rights when they searched his truck and his home; he claimed that, although he consented to the searches, his consents were invalid because they were the result of coercion and duress. To prevail on his claims at trial,

then, he had to produce evidence sufficient to enable a reasonable jury to find that the officers intentionally committed acts that violated his constitutional rights.

To establish a constitutional violation with respect to the initial traffic stop, Mr. Davis had to produce evidence showing that Officer Novy lacked reasonable suspicion to believe that Mr. Davis was, or was about to be, engaged in criminal activity. "Reasonable suspicion" "requires more than a mere 'hunch'"; it is some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v. Ienco*, 182 F.3d 517, 523, 524 (7th Cir. 1999) (citing *United States v. Cortez*, 449 U.S. 411,, 101 S. Ct. 690 417, 66 L. Ed. 2d 621 (1981)). On this issue, it is clear that the 9-1-1 call that came from the dispatch center would not have been enough, by itself, to establish reasonable suspicion. *See Florida v. J.L.*, 529 U.S. 266, 270-72, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000) (an anonymous tip will not give rise to reasonable suspicion unless it is suitably corroborated – both in terms of its tendency to identify a determinate person, and in terms of its assertion of illegality). But it is equally clear that the obstructed registration sticker – which clearly violated Illinois law, *see* 625 ILCS 5/3-413(b) ("[r]egistration stickers . . . shall be . . . clearly visible at all times) – would have provided Officer Novy with reasonable suspicion (and probable cause, for that matter) to stop Mr. Davis. *See Whren v. U.S.*, 517 U.S. 806, 116 S. Ct. 1769, 810, 135 L. Ed. 2d 89 (1996) ("the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred); *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989) (reasonable suspicion is a less demanding standard than probable cause).

At trial, Mr. Davis admitted that he had committed the violations for which Officer Novy cited him: he testified that he had moved to Illinois in August of 2001, and that he had never obtained an Illinois driver's license; he admitted that, on the morning of February 9, 2002, the registration sticker on the rear license plate of his truck was partially obscured by the bracket around the plate; and he admitted that, as of that date, he had no insurance for his truck. Tr. at 103, 146-48, 150-51. It is true that Officer Novy could not have known, when he made the decision to stop Mr. Davis, that he had no Illinois driver's license and no insurance. Thus the constitutionality of the initial stop depends on whether Officer Novy had noticed that Mr. Davis' registration sticker was obstructed *before* pulling him over. The testimony at trial was uncontroverted that he had.

Officer Novy testified that he responded to the MDT report and immediately noticed Mr. Davis' truck, which matched the description given in the 9-1-1 call; he testified that he pulled in behind Mr. Davis and followed him for a few minutes, and it was during this time that he noticed that the registration sticker on Mr. Davis' rear license plate was obstructed to the point where it was unreadable, which he knew violated the Illinois vehicle code. Tr. at 245-46. And Officer Escobar testified that Novy told him he had stopped Davis because of the obstructed sticker. Tr. at 461.

Mr. Davis testified that Officer Novy did not mention the obstructed registration sticker right away; in fact, according to Mr. Davis, Officer Novy initially told him that he had done nothing wrong, that he had stopped him because of the 9-1-1 call. Tr. at 113. And Mr. Davis' attorney pointed to this testimony as evidence that Officer Novy actually stopped Mr. Davis because of the call, and not because of any violation of the vehicle code. But Mr. Davis' testimony does not prove

that Officer Novy had not yet noticed the sticker when he pulled Mr. Davis over; nor does it contradict Officer Novy's testimony that he saw the obstructed sticker before he decided to stop Mr. Davis. Nothing in the law or the Fourth Amendment would have required Officer Novy to mention at the outset the obstructed sticker.

Officer Novy quite candidly admitted that, when he made the decision to stop Mr. Davis, he had two things in his mind: first, he was thinking that this vehicle matched the description of the vehicle reported over the MDT, and, second, he was thinking that the same vehicle was showing a clear violation of the Illinois Vehicle Code. *Id.* at 246-47. Such dual motives are permissible. Once the vehicle code violation is established, the stop is constitutional; Officer Novy's mixed motives don't destroy the constitutionality of that traffic stop. *See Whren*, 517 U.S. at 812-13 (an otherwise valid traffic – violation arrest is not rendered invalid by the fact that it was "a mere pretext for" some other type of search; the constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved). The evidence on this point yields only one possible conclusion: Officer Novy initially stopped Mr. Davis, at least in part, because of the obstructed registration sticker. The stop was, therefore, based upon reasonable suspicion of criminal activity – namely, a violation of the Illinois vehicle code provision requiring registration stickers to be clearly visible – and, therefore, satisfies the Fourth Amendment.

The Court next considers Mr. Davis' claim concerning the searches of his truck and his home. A search conducted pursuant to a valid consent is constitutionally permissible. *E.g., Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041, 222, 36 L. Ed. 2d 854 (1973); *United States v. Scheets*, 188 F.3d 829, 839 (7th Cir. 1999). To be valid, consent must

be voluntarily given, however, and voluntariness is gauged by looking to the totality of all the surrounding circumstances. *Schneckloth*, 412 U.S. at 226. The testimony at trial shows quite clearly that Mr. Davis voluntarily consented to the searches of both his truck and his home.

Officers Novy and Escobar both testified that Mr. Davis consented to the search of his truck and the search of his home. Both officers testified that Mr. Davis was, at all times, cooperative; he never gave any indication that he objected to the searches. In fact, Mr. Davis admitted that he orally gave the officers permission to search his truck, and he admitted that he signed a consent card for the search of his home; he further admitted that the consent card, on its face, indicated that he was voluntarily agreeing to the search. Mr. Davis also admitted that he did nothing and said nothing to indicate to the officers that he in any way objected to the searches.

At argument on the motion for judgment as a matter of law, Mr. Davis' attorney argued that, although Mr. Davis had outwardly consented to the searches, his consent was not voluntary; rather, it was compelled under the circumstances. But, based on the evidence presented at trial, the circumstances were not so extreme that they could have amounted to coercion or duress. First, the officers testified that their demeanor was, at all times, polite and professional, and Mr. Davis agreed that this was the case; he testified that the officers were never threatening or offensive, they never touched him, never displayed their weapons. The officers did nothing to coerce, harass, intimidate or threaten Mr. Davis; nor is there any evidence to suggest that they otherwise improperly induced Mr. Davis' consent. In fact, as the Court understands counsel's argument, Mr. Davis concedes that the alleged coercion stemmed, not from anything the officers said or did, but from the fact that Mr. Davis was disabled, that he

was worried about what would happen to his dogs if he went to jail, that he was worried about how he could get to work if his truck was impounded, and that he was worried that his neighbors would walk by, see what was going on, and think he was a pervert or pedophile.

As an initial matter, the fact that the officers explained to Mr. Davis what would happen if he refused to consent to the searches, i.e. that his truck would be impounded and he would go to jail, does not render the consents involuntary. *See Scheets*, 188 F.3d at 840 (an agent's explanation of what would transpire does not render a consent involuntary). Officer Novy truthfully reported what the law required him to do, and there is no evidence to suggest that he explained the situation in a way calculated to induce Mr. Davis' consent. Moreover, the Court recognizes that, if these things had come to pass, Mr. Davis would have been terribly inconvenienced – if he had been taken to jail, he would have had to make arrangements for the care of his dogs, and if he had lost his truck, he would have had to make other arrangements for getting around. But the potential for inconvenience does not rise to the level of duress or coercion required to vitiate an otherwise voluntary consent.

Nor would the potential for embarrassment be enough to vitiate the consent. It is true that the stop took place on a sunny Saturday afternoon, within a few blocks of Mr. Davis' home, and that, during the stop, the lights were flashing on at least one of the squad cars. But, as plaintiff's counsel admitted at oral argument on the motion, any traffic stop involves some level of embarrassment, as others pass by staring, wondering what the subject of the stop might have done wrong. Mr. Davis' arguments to the contrary notwithstanding, the officers did and said nothing that would have given any potential passerby any idea that Mr. Davis had

been stopped in connection with a call about a potential pedophile. The officers did nothing that would have indicated to a passerby that Mr. Davis was being detained for anything other than a run-of-the-mill traffic violation; there is nothing to suggest that they were, for example, making a show of the thong they found, or speaking loudly about the 9-1-1 call, or the fact that the items in Mr. Davis' truck suggested that he might have been the one taking pictures of kids. Officer Novy's search of the truck was limited in scope and duration, tailored to achieve the officer's reasonable objectives.

Further tipping the scales against Mr. Davis' coercion argument is the fact that he is highly educated – by his own admission, he has two master's degrees and an uncompleted doctorate degree; he is also older than both of the officers. To the extent he was vulnerable because of his inability to walk great distances, his education, work experience, and age would seem to have balanced that out. *See, e.g., Schneckloth*, 412 U.S. at 226 (in determining whether a person's will was overborne, the Court considers, among other things, the person's age and lack of education, level of intelligence).

In view of all of the surrounding circumstances, including most notably the officers' demeanor, Mr. Davis' physical and mental capabilities, and the duration and scope of the intrusions, Mr. Davis consented to the searches of his truck and his home, and those consents were voluntary. No reasonable jury could have found otherwise

D. Qualified Immunity

Finally, even if the consents were invalid, and even if the initial stop or subsequent searches fell short of satisfying Fourth Amendment standards, the Court finds that the officers

would have been shielded from any liability under the doctrine of qualified immunity.

"[G]overnment officials performing discretionary functions" are shielded from liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987) (citations omitted). "[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action . . . assessed in light of the legal rules that were 'clearly established' at the time it was taken. . . ." *Id.* at 639. The doctrine of qualified immunity allows for the realization that "[i]t is sometimes difficult for an officer to determine how [a particular] legal doctrine . . . will apply to the factual situation the officer confronts." *Saucier v. Katz*, 533 U.S. 194, 205, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001). "If the officer's mistake as to what the law requires is reasonable, . . . the officer is entitled to the immunity defense." *Id.* Thus, "[o]fficers under this standard may be protected from liability for objectively reasonable decisions, even if wrong"; "qualified immunity is not forfeited unless 'no reasonable officer could have mistakenly believed' that the conduct was unlawful." *Saffell v.* Crews, 183 F.3d 655, 658 (7th Cir. 1999) (citing *Jones v. City of Chicago*, 856 F.2d 985, 994 (7th Cir. 1988)).

The Court first considers whether Officer Novy is entitled to qualified immunity. With respect to the initial decision to stop Mr. Davis, if, as the evidence shows, Officer Novy stopped Mr. Davis, even in part, because of the obstructed registration sticker, the stop was constitutional and Officer Novy could not be held liable for any harm Mr. Davis suffered. But even if the Court assumes, as Mr. Davis argued,

that Officer Novy pulled him over solely because of the 9-1-1 call, and that Officer Novy did not notice the sticker until after he stopped Mr. Davis, the Court finds that Officer Novy would still not be liable to Mr. Davis because he would be entitled to qualified immunity.

Although the Court has determined that, under *Florida v. J.L.*, the 9-1-1 call alone could not have provided reasonable suspicion to stop Mr. Davis, the Court nonetheless recognizes that Officer Novy may reasonably have concluded that, under the circumstances, the stop was justified. Officer Novy testified that, with his experience and training, a number of things about Mr. Davis raised red flags from the outset. First, Mr. Davis' truck matched the description of the truck identified in the 9-1-1 call. Second, Officer Novy testified that, in his view, Mr. Davis' behavior was suspicious: when Officer Novy first saw Mr. Davis, he was stopped at the side of the road, and, at least from Officer Novy's perspective, it appeared that Mr. Davis saw the squad car and then began moving. Tr. at 246. Officer Novy also testified that, at the time he responded to the MDT on February 9, 2002, he had information about another call that had come in to the dispatch center eleven days earlier; the call reported a white male taking pictures of a child in the same area, though the car described in the earlier call was markedly different from the truck described in the second call. As a result of that call, the department had placed that neighborhood on its "frequent patrol" list; officers were paying an exceptionally high degree of attention to that neighborhood, with the express purpose of preventing child exploitation in the area. With his training and experience, Officer Novy could reasonably have believed that these things combined were enough to justify an investigatory stop. Once he made the stop, and once he saw the hat, the camera bag, the duct tape, the rope, and the towels – all in plain view in the cab of Mr. Davis' truck – he reasonably

could have believed that further investigation was warranted; indeed, under those circumstances, it is difficult to imagine that any police officer would have behaved differently.

Moreover, based upon Mr. Davis' conduct – which, by Mr. Davis' own admission, indicated a desire to cooperate, and in no way indicated a desire to stop or prevent the searches – Officer Novy could reasonably have believed that Mr. Davis voluntarily consented to the searches of his truck and his home. Based on this evidence, the Court finds that, even if the searches ran afoul of the Fourth Amendment, Officer Novy would not be liable for any resulting damages.

As a practical matter, given the evidence adduced at trial, the Court's qualified immunity analysis with respect to Officer Novy resolves the question for Officer Escobar as well. The trial testimony establishes that, to the extent Officer Escobar personally did or said anything that might have contributed to the alleged constitutional violations, he was following Officer Novy's lead. Officer Escobar testified that he was not involved in the initial decision to stop Mr. Davis; rather, that was Officer Novy's decision. Officer Escobar also testified that Officer Novy raised the issue of searching, and searched, Mr. Davis' truck and home, whereas Escobar was primarily concerned with ensuring Novy's safety. In other words, Officer Novy was calling the shots, and Officer Escobar was playing a supporting or back-up role. Officer Novy and Mr. Davis testified consistently. Thus, if Officer Novy is shielded from liability, Officer Escobar would similarly be shielded from liability. *See, e.g., United States v. Hensley*, 469 U.S. 221, 232, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985) (if an officer relies on information or knowledge of another officer, he is entitled to qualified immunity, as long as his reliance was objectively reasonable). *See also Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998); *Irvin*

v. Kaczmaryn, 913 F. Supp. 1190, 1199-1200 (N.D. Ill. 1996).

E. Conclusion

For the reasons explained above, the Court finds that no reasonable jury could find, based on the evidence presented at trial, that the defendants violated Mr. Davis constitutional rights. The Court further finds that, even if the evidence could support Mr. Davis' claims, the defendants are entitled to qualified immunity for any constitutional violation that occurred during the February 9, 2001 encounter. Accordingly, the Court grants the defendants' motion for judgment as a matter of law. The Clerk is directed to enter judgment in favor of the defendants.

ENTER:

/s/
ARLANDER KEYS
United States Magistrate Judge

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 03 C 572

[Filed October 14, 2003]

MICHAEL E. DAVIS,	)
	)
Plaintiff,	)
	)
v.	)
	)
CHARLES NOVY and	)
LUIS ESCOBAR,	)
	)
Defendants.	)
	)

JUDGES: Suzanne B. Conlon, United States District Judge.

MEMORANDUM ORDER AND OPINION

Michael E. Davis ("Davis") sues Charles Novy ("Novy") and Luis Escobar ("Escobar") (collectively, "defendants"), individually and in their capacity as Bolingbrook police officers, for unlawful search and seizure in violation of his Fourth (Counts I through III) and Fourteenth Amendment (Count IV) rights pursuant to 42 U.S.C. § 1983. Davis

requests punitive damages (Count V). The court previously dismissed Count IV. *Davis v. Novy*, 2003 U.S. Dist. LEXIS 7076, 2003 WL 1964200 (N.D. Ill. April 25, 2003). Defendants move for summary judgment pursuant to Fed. R. Civ. P. 56.

BACKGROUND

I. Local Rule 56.1

Local Rule 56.1 requires litigants to follow a detailed procedure in filing and responding to summary judgment motions. Local Rule 56.1 requires both the moving and non-moving parties to submit a statement of material facts, including, "specific references to the affidavits, parts of the record, and other supporting materials relied upon." Local Rule 56.1(a)(3); Local Rule 56.1(b)(3)(B). Evidence submitted at summary judgment must be admissible at trial under the Federal Rules of Evidence. *Woods v. City of Chicago*, 234 F.3d 979, 988 (7th Cir.2000). All facts not properly supported by the record evidence must be disregarded. *Brasic v. Heinemann's Inc.*, 121 F.3d 281, 284 (7th Cir. 1997).

Both parties fail to support factual statements with admissible evidence. *See Winskunas v. Birnbaum*, 23 F.3d 1264, 1267-68 (7th Cir. 1994)(only admissible evidence may be considered on summary judgment). For example, defendants rely on Novy's testimony to support ¶¶ 4 and 5 of their statement of facts without establishing he has personal knowledge of the subject matter. Davis' responses to these paragraphs are similarly flawed as they are based on evidence lacking the requisite foundation. Accordingly, the parties' factual statements will be considered only to the extent they are properly supported by admissible evidence.

II. Facts

The following facts are undisputed unless otherwise noted. On February 9, 2002, Novy received a report on his mobile data terminal stating that a white male wearing a hat and driving a black Ford pick-up truck with a canopy, or cover over the bed of the truck, was taking pictures of children. According to the report, the white male was last seen heading towards Lindsey. Shortly thereafter, Novy spotted a dark green Ford pick-up truck with a canopy approximately one block from Lindsey. Davis was driving the truck. Novy pulled up closely behind Davis' vehicle. According to Novy, he noticed the sticker on Davis' license plate was partially obscured. Novy pulled Davis over approximately one block later.

Davis claims he immediately asked Novy if he had committed a traffic offense. According to Davis, Novy told him a woman reported that he was photographing children. Davis explained to Novy that he was photographing snow piles and vehicles blocking access to sidewalks because he was having difficulty getting through with his wheelchair. Davis offered the film to Novy, who refused to take it. At Novy's request, Davis produced a valid Indiana driver's license. Davis was unable to produce a valid Illinois driver's license or insurance card.

Shortly thereafter, Escobar arrived in a second squad car. Davis gave Escobar the film from his camera. Novy asked Davis if he could search his car, stating that if he refused, he would be taken to jail and his vehicle impounded. According to Davis, he agreed to the search because he felt he had no other choice "[g]iven [his] disability and his reliance on his vehicle in traveling any appreciable distance and in light of

the police show of force and threat to incarcerate him if he did not agree." Pl. Dep. at 93, *citing* Complaint at ¶ 11. After searching Davis' car, Novy arrested Davis for not having a valid Illinois driver's license.

Davis was placed in Novy's squad car. Escobar then handed Davis a signature card authorizing a search of his house. According to Davis, Novy told him that they would take him to jail and impound his car if refused to consent to the search. Davis signed the consent form. Defendants took Davis home and searched his house. After the search, defendants issued vehicle citations for driving without a valid Illinois drivers' license, an insurance card and a properly displayed registration. Novy Dep. at Ex. 7-9.

DISCUSSION

I. Legal Standard

Summary judgment is appropriate when the moving papers and affidavits show there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Once a moving party has met its burden, the non-moving party must go beyond the pleadings and set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(*e*); *Silk v. City of Chicago*, 194 F.3d 788, 798 (7th Cir. 1999). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

II. Qualified Immunity

Defendants claim summary judgment is appropriate because they are entitled to qualified immunity. Once an officer raises qualified immunity as a defense, the court must determine whether: (1) the alleged conduct establishes a constitutional violation; and (2) the constitutional standards were clearly established at the time of the violation. *Lanigan v. Village of East Hazel Crest, Illinois*, 110 F.3d 467, 472 (7th Cir. 1997).

A. Constitutional Violation

Defendants argue that Davis cannot establish a constitutional violation. In order to state a claim under § 1983, Davis must establish that defendants: (1) deprived him of a right secured by the Constitution or laws of the United States; and (2) acted under color of state law. *Brokaw v. Mercer County*, 235 F.3d 1000, 1009 (7th Cir. 2000). Defendants do not dispute that they were acting under color of state law. Rather, defendants argue that Davis cannot establish they deprived him of his constitutional rights. According to Davis, defendants violated his Fourth Amendment rights by unreasonably seizing him during the traffic stop, arresting him without probable cause and searching his property without his consent.

1. Traffic Stop

"Temporary detention of individuals during the stop of an automobile by police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of the Fourth Amendment." *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996). However, an officer may conduct a brief

investigatory stop without violating the Fourth Amendment when he has a reasonable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Reasonable suspicion is "some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981). This analysis "involves a consideration of the totality of circumstances known to the officer at the time of the stop." *United States v. Swift*, 220 F.3d 502, 506 (7th Cir. 2000), *quoting United States v. Quinn*, 83 F.3d 917, 921 (7th Cir. 1996). Indeed, determinations of probable cause and by analogy, reasonable suspicion, generally are mixed questions of law and fact. *Knox v. Smith*, 342 F.3d 651, 657 (7th Cir. 2003). *See also Qian v. Kautz*, 168 F.3d 949, 953 (7th Cir. 1999) ("existence of probable cause is often a jury question" and summary judgment is appropriate "only where there is no room for a difference of opinion concerning the facts or the reasonable inferences to be drawn from them").

Defendants claim Novy had probable cause to stop Davis because his license plate sticker was partially obscured. *See United States v. Murray*, 89 F.3d 459, 461 (7th Cir. 1996)("Ulterior motives do not invalidate a police stop for a traffic violation, no matter how minor, if a motor vehicle law infraction is detected"). In response, Davis offers evidence that could lead a reasonable jury to conclude that Davis did not notice the problem with his registration sticker until after the stop. Specifically, Davis offers evidence that defendants' story has changed. *See, e.g., Stalter v. Wal-Mart Stores, Inc.*, 195 F.3d 285, 291 (7th Cir. 1999)(jury can reasonably infer fundamental change in story is after-the-fact justification).

At the time of the stop, Davis claims Novy denied that he pulled him over for a traffic violation, but rather told him that

the stop was based on an anonymous tip. Indeed, defendants claimed in their motion to dismiss that the stop was proper because Novy reasonably suspected that Davis was violating the Illinois stalking statute based on an anonymous tip. Defendants' motion to dismiss did not mention the partially obscured license plate sticker. Nor do several police documents relating to the incident refer to the sticker problem. *See* Novy Dep. at Ex. 2-3. Although defendants point out that the police incident report lists the partially obscured license plate sticker as an offense, it is listed as the last of four offenses; the first offense listed is "suspicious auto." *Id.* at Ex. 6. More importantly, the narrative section of the police incident report states that Novy "located a vehicle matching that description and conducted a traffic stop." *Id.* The narrative does not refer to Davis' partially obscured license plate sticker. Based on this record, Davis raises a genuine issue of material fact as to whether Novy stopped him based on the partially obscured license plate sticker.

Apparently recognizing this problem, defendants return to their original argument in their reply brief, claiming that the stop was valid based solely on the anonymous tip. Arguments not raised for the first time until reply are waived. *Native Am. Arts, Inc. v. Earth Dweller, Ltd.*, 2001 U.S. Dist. LEXIS 12010, No. 01 C 2370, 2001 WL 910394, at *5 (N.D. Ill. Aug. 10, 2001). Even if the court considers defendants' belated argument, summary judgment is inappropriate.

A corroborated anonymous tip may exhibit "sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." *Florida v. J.L.*, 529 U.S. 266, 270, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000), *quoting Alabama v. White*, 496 U.S. 325, 327, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990). The amount of information given by an anonymous source, reliability of the information and amount

of police corroboration are all relevant in determining whether an anonymous tip provides an officer with reasonable suspicion. *United States v. Price*, 184 F.3d 637, 640 (7th Cir. 1999). Davis drove a dark green, not a black, truck and was not wearing a hat at the time Novy pulled him over. Prior to the stop, Novy knew Escobar had not independently corroborated the anonymous tip. Novy Dep. at 249. Moreover, Novy did not observe Davis taking pictures or otherwise doing anything suspicious. Drawing all reasonable inferences in Davis' favor, a reasonable jury could conclude that Novy did not have reasonable suspicion to stop Davis based on what he knew prior to the stop.

Defendants' reliance on *United States v. Raibley*, 243 F.3d 1069 (7th Cir. 2001), does not change this result. In *Raibley*, the officer personally interviewed the store manager, who observed the defendant covertly videotaping a young female employee from his truck. *Id.* at 1071. The officer left the store to look for the defendant. When he was unable to locate him, he returned to the store and discovered the defendant's unoccupied truck in the parking lot. The officer parked his car in plain view in front of the store and went inside. While inside, he observed the defendant driving his truck out of the parking lot at 30 to 40 miles per hour. *Id.* The Seventh Circuit concluded that "[u]nprovoked flight from a police officer is suggestive of wrongdoing and coupled with the other facts we have noted supplied grounds on which to stop [defendant] for questioning." *Id.* at 1075. Here, defendants were unable to independently verify the anonymous tip through witnesses. Nor did Novy observe Davis acting suspicious even after he began following him closely. Based on this record, a reasonable jury could conclude defendants' alleged conduct establishes a constitutional violation.

2. Arrest, Searches and Punitive Damages

Although defendants' motion acknowledges Davis' arrest and punitive damages claims, defendants fail to address either claim in their opening brief. The court need not consider perfunctory and undeveloped arguments unsupported by authority. *United States v. Berkowitz*, 927 F.2d 1376, 1384 (7th Cir. 1991).

Moreover, defendants fail to discuss whether Davis' arrest and their subsequent searches are tainted if the stop is found to be invalid. *Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975)(causal chain must be sufficiently attenuated to dissipate the taint of prior illegal conduct). Rather, defendants waited until reply to argue, without any supporting authority, that "the proximate cause of that stop leads to conduct where the officers enjoy qualified immunity." *See* Def. Reply at 13-14. Without any analysis under relevant legal authority, the court cannot reach the merits of defendants' untimely argument. *Berkowitz*, 927 F.2d at 1384; Native American Arts, Inc., 2001 U.S. Dist. LEXIS 12010, 2001 WL 910394, at *5. Accordingly, defendants fail to show that Davis' constitutional claims are insufficient as a matter of law.

B. Clearly Established Right

Nor have defendants established the second element of the qualified immunity inquiry. A clearly established right is one where "[t]he contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001). A right to be free from unreasonable search and seizure under the circumstances alleged here was clearly established at the time of defendants'

alleged violations. *See Florida v. J.L.*, 529 U.S. at 268, 274 (anonymous tip that a young black male at a particular bus stop wearing particular clothing possessed a fireman lacked sufficient indicia of reliability to establish reasonable suspicion); *Brown v. Illinois*, 422 U.S. at 603-04 (illegal stop may taint subsequent arrest and/or consensual search). Defendants do not claim otherwise. *See* Def. Brief at 17-19 and Reply at 12-14 (addressing only the merits of Davis' search claims). Therefore, defendants' summary judgment motion must be denied.

CONCLUSION

Genuine issue of material facts preclude summary judgment. This case must proceed to trial.

ENTER:

/s/
Suzanne B. Conlon
United States District Judge